Office-Supreme Court, U.S.
FILED
JUN 18 1985
ALEXANDER L. STEVAS
CLERK

84-1623

In the Supreme Court of the United States

OCTOBER TERM, 1984

VOLUNTEERS OF AMERICA-MINNESOTA-
BAR NONE BOYS RANCH, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR VOLUNTEERS OF AMERICA-MINNESOTA-BAR NONE BOYS RANCH

JOHN M. HUSBAND
(Counsel Of Record)

MICHAEL M. SHULTZ
HOLLAND & HART
555 Seventeenth Street
Suite 2900
P.O. Box 8749
Denver, Colorado 80201
(303) 295-8000
Attorneys for Petitioner

12pp

TABLE OF CONTENTS

Page

Statement of the Case 1
Argument 2
Conclusion 11

TABLE OF AUTHORITIES

Tony & Susan Alamo Foundation v. Secretary of Labor, No. 83-1935, 53 U.S.L.W. 4489 (April 29, 1985) 10

STATEMENT OF THE CASE

This Petition for a Writ of Certiorari was filed with the Court to determine whether the National Labor Relations Act ("NLRA") grants the National Labor Relations Board ("the Board" or "NLRB") jurisdiction over the Volunteers of America ("VOA") Bar None Boys Ranch ("the Ranch") for emotionally disturbed children and adolescents when that organization is engaged in the primary religious activities of an established church. In its brief in opposition, the Board affirms its support for "the legal principle and protection reflected in *Catholic Bishop;*" however, the Board maintains that "the record in this case is so sparse and devoid of relevant specifics as to present an inappropriately abstract and hypothetical occasion for clarifying the boundaries established by *Catholic Bishop.*" Brief for the National Labor Relations Board in Opposition at 6 (hereinafter "Brief in Opposition"). The Board admits that the Petitioner's claims raise serious issues regarding the jurisdiction of the Board, but again suggests that the testimony supporting Petitioner's claims is "too conclusory and general to permit a conscientious examination of the claim." Brief in Opposition at 11.

With due respect to the Board, the record below is clear and concrete and the testimony supporting the wholly religious character of the Ranch is uncontroverted. At the representation hearing, VOA called three witnesses—Reverend Jack Dignum, Regional Director of the Volunteers of American for the Midwest Division; Verlyn Wenndt, Director of the Ranch; and Larry Weight, Program Director at the Ranch. No union witnesses were called and the union representative who attended the hearing did not cross-examine VOA's witnesses. Despite VOA's argument at the representation hearing that "the Board does not have jurisdiction over it because it is an unincorporated, non-profit religious church carrying out its religious mission," the Board issued its Decision and Direction of Election, designating all full-time and regular part-time mainte-

nance, laundry, housekeeping and childcare workers employed by the Ranch as the appropriate bargaining unit. VOA's request for review of the Board's decision was denied.

ARGUMENT

The uncontradicted testimony at the representation hearing demonstrates that the Bar None Boys Ranch is a primary religious activity of the Volunteers of America and that employees at the Ranch are engaged in carrying out the mission of the Church and are evaluated according to how well they carry out the Church's religious mission. Reverend Dignum testified that the purpose in forming the VOA "was to provide an intimate knowledge of God to all the people we serve and to provide services that would uplift and reach these people . . . . . you can't talk to a person when he is hungry or when he is cold. Therefore, our religion ministry is to provide for the material needs of the individual, at the same time we are providing for humanitarian services, we are also espousing our religious beliefs. Providing knowledge of God to the people we serve." (T.-15, 16).[1]

Reverend Dignum further testified regarding the first article of the constitution of the National Society of the Volunteers of America. He stated: "The first article says that the National Society of the Volunteers of America is a movement organized for the reaching and uplifting of all sections of the people and bring them to the immediate knowledge and active service of God." (T-26). When asked how the religious mission of the VOA was carried out, Reverend Dignum responded: "Through all of our activities. All of our program services have to fall within the articles that I am referring to here or we would not be operating." (Id.). Reverend Dignum explained that the "religious mission is carried out in all the acts that we do. In specific programming, we have the components

---

[1] References to the transcript of the underlying representation hearing will be in the form of "T.-" followed by the page number(s) on which the cited testimony can be found.

that make up the spiritual end of our activities as well as the material needs and we consider this as all part of the Christian mission. We do not have any distinction in our religion between the necessities of life that people need and the religious activities. We feel that the humanitarian activities that we are conducting directly lead the people to the immediate knowledge of God." (T-39, 40).

One unique aspect of the VOA is that it does not proselytize and attempt to recruit the people it serves to membership in the VOA. Rather, the philosophy of the VOA is that persons should be brought to the immediate knowledge of God and that they should be returned to their existing churches. If a person does not have a church, then that person may become a member of the VOA church. Thus, Reverend Dignum explained that "there is a unique, distinctive element to our church that is not found in any other church. Most churches are trying to gather members unto them. We are trying to return them to existing churches and function as a church for those people who do not have a church." (T.-64).

The Bar None Boys Ranch is operated in strict accordance with the philosophy and mission of the VOA. Reverend Dignum explained that the VOA monitors "the programs to insure that they meet our creeds and our activities that everything complies with our religious nature. This is something that they must follow or the national organization has the authority and the power to change, alter or remove any such activity that does not meet our religious creed." (T.-16). Reverend Dignum continued, "[E]verything must be in accord with the religious tenets of the organization. We very carefully review all of the program activities that are requested by any of the local branches to insure that they meet the criteria. We will not permit a program to operate that does not meet our tenet." (T.-23).

When asked whether the religious mission of the VOA is carried out at Bar None Boys Ranch, Reverend Dignum replied "yes." (T.-30). The specific reason justifying the Bar None

program, according to Reverend Dignum, is that the program "provide[s] service to adolescents and children who have spiritual, mental or physical needs." (T.-40). When asked whether the program at the Ranch constituted the propagation of the VOA religious beliefs, Reverend Dignum again replied "yes." (Id.).

The uncontroverted testimony of the three witnesses at the representation hearing demonstrates that employees at the Ranch are required to carry out the Church's mission and evaluated on how well they carry out that religious mission. Reverend Dignum gave the following testimony:

Q. Is the religious mission carried out at Bar None?

A. Yes.

Q. Are the employees at Bar None told the religious nature of the VOA?

A. Yes.

Q. Are they instructed about the religious tenets of the VOA?

A. Yes.

Q. Do the[y] review the VOA manuals?

A. Yes.

Q. Do the individual employees at Bar None carry out the religious purposes of the VOA?

A. Yes.

Q. Is religion a direct and integral part of the program at Bar None?

A. Yes, it has to be.

Q. Are the employees that carry out those programs an integral and direct part of the VOA religious mission?

A. Yes.

Q. Do the employees—are the employees evaluated on how they carry out the VOA religious mission at Bar None?

A. Yes, they are.

Q. Are the employees at Bar None required to engage in the VOA's religious mission?

A. Yes.

(T.-30, 31).

Similar testimony was given by Mr. Wenndt, Director of the Bar None Boys Ranch.

Q. Are the programs and activities at Bar None designed to carry out the religious mission of the VOA?

A. Yes.

Q. Are the employees at Bar None told that the VOA is a church?

A. Yes.

Q. And they are told that when they apply?

A. Yes.

Q. Is an orientation process involved in this?

A. Yes.

Q. During the orientation, they are advised of the VOA's religious tenets?

A. Right.

Q. Do employees review the VOA manual when they come on board?

A. Yes.

Q. During the interview process and orientation process when the employees job is explained to them, do you explain the religious nature of the job to them?

A. Yes. It's directly in their job descriptions. As in the manual given to them.

Q. They are told that they are carrying out the VOA religious mission?

A. Yes.

Q. Are the employees and workers at Bar None expected to carry out the VOA religious mission?

A. Yes.

Q. Do they, in fact, carry it out?
A. Yes.

Q. You make sure that's done?
A. Yes, through their job reviews.

Q. So the employees are evaluated on that?
A. Yes.

Q. They are specifically evaluated on how well they carry out the religious mission of the VOA?
A. Yes, on the spiritual aspects.

Q. And the employees are required to engage in religious activities?
A. Yes.

Q. And these religious activities are discussed with them at their evaluations?
A. Yes.

Q. All the employees at Bar None are employed by the church?
A. Yes.

(T.-51, 52, 53).

Finally, Mr. Weight, Program Director at the Bar None Boys Ranch, explained how employees carry out the church's mission.

Q. How do you treat the kids [at the Ranch] and what are the different components of the treatment?
A. All of the kids that are there obviously have problems. We treat them from three different standpoints, physical, emotional and spiritual. The treatment plan reflects all three of those factors.

Q. Does Bar None carry out the religious mission of the VOA?
A. Yes, it does.

Q. Is religion an integral part of the VOA Bar None programs?

A. It certainly is.

Q. How is it an integral part?

A. As I've already indicated I am involved with treatment plans and hiring, etc., I don't see any aspect of anything we're doing at Bar None that prioritizes any of those three components. They're all very important and as Reverend Dignum inidicated, certainly the spiritual is why we are there.

Q. Are the programs at Bar None designed with the religious mission in mind?

A. Yes, they are.

Q. Are the employees told about the VOA church when they are applying and taken through the orientation process?

A. Yes, they are.

Q. Do they review the VOA manual when they come on board?

A. Yes, they are required to do that.

Q. When employees are hired, I assume you are involved in the hiring process and the orientation process also?

A. For most of the staff, yes.

Q. When their individual jobs are described to them, do you go into the VOA religious mission and the spiritual aspect of the treatment with them?

A. I do. That's made very succinct with all of the staff.

Q. Are the employees expected to carry out the VOA religious mission in their jobs?

A. Yes and with that—and I also sit in on practically all of the job reviews. There is a segment in the job performance review that we relate specifically to that area.

Q. So they are evaluated on how well they carry out the VOA religious mission?
A. Yes.
Q. They are required by their job to carry out the religious mission?
A. They are.
Q. It's partly your job to make sure that this is carried out?
A. That is correct.
Q. These matters are discussed with them during their job evaluations?
A. Right.
Q. Are the employees employed by the VOA church?
A. Yes, they are.

(T.-60, 61, 62).

The record could not be more clear that all employees at the Ranch are hired, evaluated and retained on the basis of how well they carry out the mission of the VOA church. This is not a case where the church has defined for itself what constitutes a religious activity; rather, it is the religious belief of the VOA that a person's physical, emotional and spiritual needs must be dealt with as a whole to bring that person to the immediate and active service of God. The VOA does not provide the services at the Bar None Boys Ranch for a humanitarian, secular purpose only. These services are provided for the express purpose of bringing the children and adolescents at the Ranch to the immediate and active service of God.

In its Brief in Opposition, the Board mischaracterizes the record in two regards. First, childcare workers are not the only employees at the Ranch who are expected to carry out the religious mission of the church. Mr. Wenndt did testify concerning childcare workers and how they would carry out the religious mission of the church, but never suggested that they were the only employees who carried out the church's mission. (T.-54). Second, the Board suggests that childcare workers

carry out the VOA's religious mission only by providing a positive role model. This miscomprehends the nature of the work done by childcare workers. Mr. Wenndt testified that "[m]y belief and some of the staff's belief is that they [the children at the Ranch] can't come to believe in God because God is exemplified as God the Father and on a trust relationship level, some of these children don't have a very good trust relationship with their fathers. So before they can build a trust relationship with God as the Father, they must first identify with a staff so that relationship can begin to grow." (*Id.*). The positive role model presented by the childcare worker is important because "through their direct dealings with the children that they would, you know, come about to discuss spiritual aspects of life." (*Id.*). It is clear and uncontroverted that the services provided to the children and adolescents at the Ranch are designed to enable them to come to the immediate and active service of God. It is incomprehensible that such services could be characterized as secular.

The Board's reliance on *Tony & Susan Alamo Foundation v. Secretary of State,* No. 83-1935, 53 U.S.L.W. 4489 (April 23, 1985), is misplaced. In that case, this Court held that the requirements of the Fair Labor Standards Act ("FLSA") applied to the commercial activities of a non-profit, religious foundation. The case is distinguishable from the instant action because the services involved in *Tony & Susan Alamo Foundation* were commercial activities that competed with private businesses and were conducted for the purpose of raising money for the foundation. 53 U.S.L.W. at 4490. In contrast, the services at issue in this action are the primary religious activities of the VOA. Second, the provisions of the FLSA are substantially different from the provisions of the NLRA. As this Court made clear in *Catholic Bishop,* there is a significant risk of government entanglement in religious affairs when the provisions of the NLRA are applied to a church operated facility. Conceivably, the risk is less significant with the application of the FLSA. Finally, the legislative history of the FLSA demonstrates a congressional intent to encompass the

commercial activities of a religious foundation. 53 U.S.L.W. at 4491. There is no such legislative history for the NLRA demonstrating that Congress intended to bring the primary religious activities of a bona fide church within the jurisdiction of the Board.

A decision that the Board's jurisdiction does not extend to the Bar None Boys Ranch would be a limited one. It would hold only that the Board's jurisdiction does not extend to the primary religious activities of a bona fide church. Unlike other churches where the provision of social services is secondary to the churches' primary activities, the services provided at the Bar None Boys Ranch are religious activities and conducted for the express purpose of bringing the children and adolescents at the Ranch to the immediate and active service of God. It is this fundamental distinction that renders the cases cited by the Board inapposite to the instant action. *See* Brief in Opposition at 10-11.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be granted.

Dated this fourteenth day of June, 1985.

Respectfully submitted,
HOLLAND & HART

By _____
John M. Husband
Michael M. Shultz

ATTORNEYS FOR
PETITIONER
VOA-MINNESOTA-BAR
NONE BOYS RANCH

555 Seventeenth Street
Suite 2900
Post Office Box 8749
Denver, Colorado 80201
Telephone: (303) 295-8000